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8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13 Complainant,) CONSENT ORDER
14 v.)
15 F.C. FRANCHISING SYSTEMS, INC., doing)
business as FRESH COAT,)
16 Respondent.)
17)
18)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner), and F.C. Franchising Systems, Inc., doing business as Fresh Coat
21 (FCFS) (collectively, Parties) and is made with respect to the following facts:

22 **I.**
23 **RECITALS**

24 A. The Commissioner is the head of the Department of Financial Protection and
25 Innovation (Department) and is responsible for administering and enforcing the Franchise
26 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
27 in California. To register a franchise, a franchisor must file an application which includes a Uniform
28

¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance
2 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material information
3 which is intended to provide prospective franchisees with facts upon which to make an informed
4 decision to purchase a franchise, as stated in section 31001.

5 B. At all relevant times, FCFS was an Ohio corporation, with a principal place of
6 business located at 4755 Lake Forest Drive, Suite 100, Cincinnati, Ohio 45242. At all relevant
7 times, FCFS sells painting service franchises. At all relevant times, FCFS was and is registered with
8 the Department to offer and sell franchises in California.

9 C. At all relevant times, Jodi Sue Eramo (Eramo), was an individual residing in
10 Loveland, Ohio. On October 15, 2005, Eramo was certified and registered with the Ohio State Board
11 of Accountancy (OSBA) as an individual certified public accountant (ICPA). A true and correct
12 copy of Eramo's license history from the official OSBA website CPA Verify system is attached
13 hereto and incorporated by reference herein as "Exhibit A". Eramo's license expires on December
14 31, 2021.

15 D. At all relevant times, Summit Financial Group, Inc. (Summit) is an Ohio corporation
16 with a principal place of business located at 101 Commerce Boulevard, Suite A, Loveland, Ohio
17 45140. Summit engages in the business of providing financial investment and tax planning services
18 to consumers. At all relevant times, Summit was not certified and registered with the OSBA as a
19 certified public accounting firm or certified public accounting attest firm.

20 E. From at least 2010 to present, Eramo was and is employed by Summit as a vice
21 president of Summit's tax and accounting division. Eramo engaged in providing tax and college
22 planning services to Summit clients. Eramo does not have an ownership interest in Summit.

23 F. On May 27, 2021, the OSBA issued a cease and desist notice (CDN) to Eramo
24 ordering Eramo to cease and desist further use of her ICPA license or the advertisement of Summit.
25 The CDN is attached hereto and incorporated by reference herein as "Exhibit B". The OSBA issued
26 the CDN because Eramo performed an audit of a financial statement and signed as the preparer of
27 the audit, under the business name of Summit. However, neither Eramo nor Summit were registered
28 with the OSBA as a public accounting firm in Ohio, as required by Ohio Administrative Code

1 sections 4701-7-04(A) and 4701-13-02. Eramo was and is not the owner of a registered public
2 accounting firm in Ohio, nor is Summit registered as a public accounting attest firm. Simply
3 stated, Eramo and Summit both were required to be registered by the OSBA, but only Eramo
4 was registered with the OSBA, to lawfully perform an audit and execute an audit report.

5 G. On September 20, 2021, a duly calendared and noticed hearing occurred before
6 the OSBA. Eramo, represented by legal counsel, appeared before the OSBA to overturn the
7 CDN and the requirement that Eramo cease and desist from using her ICPA license. Also on
8 September 20, 2021, the OSBA issued an Adjudication Order 2021-09-02 [sic], attached hereto
9 and incorporated by reference herein as “Exhibit C”, revoking Eramo’s ICPA based upon the
10 allegations set forth in the CDN, Exhibit B herein.

11 H. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
12 statement of a material fact in any application, notice or report filed with the Commissioner under
13 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
14 required to be stated therein or fail to notify the Commissioner of any material change as required by
15 section 31123.

16 I. On September 6, 2021, FCFS filed a renewal application for registration with the
17 Department to offer and sell franchises in California (2021 Application). The 2021 Application
18 included an auditor’s consent and an FDD containing audited financial statements accompanied by
19 an independent auditor’s report dated April 2, 2021, by Summit as the firm conducting the audit and
20 signed by Eramo as the certified public accountant conducting the audit (Financial Statements). The
21 Financial Statements included balance sheets as of December 31, 2018, 2019, and 2020, and the
22 related statement of operations, members equity, and cash flows for the period of December 31,
23 2018, 2019, and 2020, and related notes. The independent auditor’s report contained an unqualified
24 audit opinion on the Financial Statements.

25 J. FCFS included the auditor’s consent and Financial Statements with accompanying
26 independent auditor’s report in its 2021 Application with the Department, even though Summit was
27 not licensed as a certified public accounting firm or certified public accounting attest firm with the
28 OSBA or any other state accountancy board.

1 K. FCFS asserts that it included the auditor’s consent and Financial Statements with
2 accompanying independent auditor’s report in its 2021 Application without knowledge as to
3 Summit’s licensure status.

4 L. The Commissioner finds that FCFS’s failure to disclose that Summit was not licensed
5 as a certified public accounting firm or certified public accounting attest firm with the OSBA or any
6 other state accountancy board, when submitting the Financial Statements and audit report in the
7 2021 Application, is an omission of a material fact under the FIL, in violation of section 31200.

8 M. The Commissioner also finds that the inclusion of the Financial Statements in the
9 2021 Application accompanied by Eramo and Summit’s independent auditor’s report asserting that
10 the Financial Statements were audited when Summit was not qualified to conduct audits because
11 Summit was not licensed as a certified public accounting firm or certified public accounting attest
12 firm with the OSBA or any other state accountancy board is an untrue statement of a material fact in
13 an application filed with the Commissioner, in violation of section 31200.

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
15 forth herein, the Parties agree as follows:

16 **II.**

17 **TERMS AND CONDITIONS**

18 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings
19 in paragraphs A through M above] in a manner that avoids the expense of a hearing and other
20 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
21 purposes and provisions of the applicable law.

22 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,
23 F.C. Franchising Systems, Inc. doing business as Fresh Coat is hereby ordered to desist and refrain
24 from the violations set forth herein, in violation of Corporations Code section 31200. The issuance
25 of this Consent Order is necessary, in the public interest, for the protection of investors and is consistent
26 with the purposes, policies, and provisions of the Franchise Investment Law.

27 3. Penalties. FCFS shall pay an administrative penalty of \$5,000 (Penalties) no later
28 than fifteen (15) calendar days after the effective date of this Consent Order as defined in Paragraph

1 21 (Effective Date). Penalties must be made payable in the form of a cashier’s check or Automated
2 Clearing House deposit to the Department and transmitted to the attention of Accounting at the
3 Department of Financial Protection and Innovation, Accounting – Legal, 2101 Arena Boulevard,
4 Sacramento, California 95834. Notice of the payment must be concurrently sent via email to Marisa
5 I. Urteaga-Watkins, Esq. at marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay Penalties in a
6 timely manner shall be deemed to be a material breach of this Consent Order.

7 4. Waiver of Hearing Rights. FCFS acknowledges that the Commissioner is ready,
8 willing, and able to proceed with the filing of an administrative enforcement action on the charges
9 contained in this Consent Order. FCFS hereby waives the right to any hearings, and to any
10 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
11 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of
12 law. FCFS further expressly waives any requirement for the filing of an Accusation pursuant to
13 Government Code section 11415.60, subdivision (b). By waiving such rights, FCFS effectively
14 consents to this Consent Order becoming final.

15 5. Failure to Comply with Consent Order. FCFS agrees that if it fails to comply with
16 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
17 it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable),
18 summarily and permanently bar FCFS from offering and selling franchises in California or deny
19 FIL applications (if applicable). FCFS waives any notice and hearing rights to contest such
20 summary actions by the Commissioner which may be afforded under the FIL, the APA, the CCP, or
21 any other provision of law in connection therewith.

22 6. Information Willfully Withheld or Misrepresented. This Consent Order may be
23 revoked, and the Commissioner may pursue any and all remedies available under law against FCFS
24 if the Commissioner discovers that FCFS knowingly or willfully withheld or misrepresented
25 information used for and relied upon in this Consent Order.

26 7. Future Actions by Commissioner. If FCFS fails to comply with any terms of the
27 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
28 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions

1 against FCFS, or any of its partners, owners, officers, shareholders, directors, employees or
2 successors for any and all unknown violations of the FIL.

3 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
4 ability to assist any other government agency (whether city, county, state, or federal) with any
5 administrative, civil or criminal action brought by that agency against FCFS or any other person
6 based upon any of the activities alleged in this matter or otherwise.

7 9. Headings. The headings to the paragraphs of this Consent Order are inserted for
8 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
9 the provisions hereof.

10 10. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
11 interest.

12 11. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
13 Consent Order it has relied solely on the statements set forth herein and the advice of its own
14 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
15 Order it has placed no reliance on any statement, representation, or promise of any other Party, or
16 any other person or entity not expressly set forth herein, or upon the failure of any Party or any
17 other person or entity to make any statement, representation or disclosure of anything whatsoever.
18 The Parties have included this clause: (1) to preclude any claim that any Party was in any way
19 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
20 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

21 12. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
22 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
23 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
24 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
25 or provision of this Consent Order by the other Party will be considered a waiver of any other
26 condition or provision or of the same condition or provision at another time.

27 13. Full Integration. This Consent Order is the final written expression and the complete
28 and exclusive statement of all the agreements, conditions, promises, representations, and covenant

1 between the Parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions
3 between and among the Parties, their respective representatives, and any other person or entity with
4 respect to the subject matter covered hereby.

5 14. Governing Law. This Consent Order will be governed by and construed in
6 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
7 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
8 forum to the maintenance of such action or proceeding in such court.

9 15. Counterparts. This Consent Order may be executed in one or more separate
10 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
11 together constitute a single document.

12 16. Effect Upon Future Proceedings. If FCFS applies for any license, registration,
13 permit, or qualification under the Commissioner’s current or future jurisdiction, or is the subject of
14 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
15 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

16 17. Voluntary Order. FCFS enters into this Consent Order voluntarily and without
17 coercion and acknowledges that no promises, threats or assurances have been made by the
18 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
19 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
20 without any duress or undue influence of any kind from any source.

21 18. Notice. Any notice required under this Consent Order shall be provided to each
22 Party at the following addresses:

23 To FCFS: Jeffrey D. Siehl, Esq.
24 F.C. Franchise Systems, Inc.
25 4755 Lake Forest Drive, Suite 100
Cincinnati, Ohio 45242

26 To the Commissioner: Marisa I. Urteaga-Watkins, Esq,
27 Department of Financial Protection and Innovation
28 2101 Arena Blvd.
Sacramento, California 95834

1 19. Signatures. A fax or electronic mail signature shall be deemed the same as an
2 original signature.

3 20. Public Record. FCFS hereby acknowledges that this Consent Order is and will be a
4 matter of public record.

5 21. Effective Date. This Consent Order shall become final and effective when signed by
6 all Parties and delivered by the Commissioner’s agent via e-mail to FCFS’s agent, Jeffrey D. Siehl,
7 Esq. at jsiehl@franchisesupport.net

8 22. Authority to Sign. Each signatory hereto covenants that he/she possesses all
9 necessary capacity and authority to sign and enter into this Consent Order and undertake the
10 obligations set forth herein.

11 Dated: 12/13/2021

_____CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____

JENNIFER RUMBERGER
Deputy Commissioner

17 Dated: 12/13/2021

F.C. FRANCHISING SYSTEMS, INC. doing business
as FRESH COAT

By: _____

JEFFREY D. SIEHL, ESQ.
Vice President and General Counsel